No. 21719, 21719A, 21719B, 21719C, 21719D

In the
United States Court of Appeals
for the Ninth Circuit

JOHN A. CROSS, et al., *Appellants*, vs. S.S. KAIMANA, her engines, etc., et al., *Appellees*.	No. 21719
JOHN A. CROSS, et al., *Appellants*, vs. S.S. LANAKILA, her engines, etc., et al., *Appellees*.	No. 21719A
JOHN A. CROSS, et al., *Appellants*, vs. S.S. ALASKA BEAR, her engines, etc., et al., *Appellees*.	No. 21719B
JOHN A. CROSS, et al., *Appellants*, vs. S.S. PACIFIC BEAR, her engines, etc., et al., *Appellees*.	No. 21719C
JOHN A. CROSS, et al., *Appellants*, vs. S.S. COAST PROGRESS, her engines, etc., et al., *Appellees*.	No 21719D

Brief of Appellee Pacific Far East Line, Inc.

FILED

JOHN HAYS
GEORGE L. WAIDELICH
DORR, COOPER & HAYS
200 California Street
San Francisco, California 94111
Attorneys for Appellee Pacific Far East Line, Inc.

BORG PRINTING COMPANY OF CALIFORNIA, 240 FIRST STREET, SAN FRANCISCO 94105

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

STATUTES

OTHER AUTHORITIES

No. 21719, 21719A, 21719B, 21719C, 21719D

In the

United States Court of Appeals

for the Ninth Circuit

JOHN A. CROSS, et al., *Appellants,* vs. S.S. KAIMANA, her engines, et al., *Appellees.*	No. 21719
JOHN A. CROSS, et al., *Appellants,* vs. S.S. LANAKILA, her engines, etc., et al., *Appellees.*	No. 21719A
JOHN A. CROSS, et al., *Appellants,* vs. S.S. ALASKA BEAR, her engines, etc., et al., *Appellees.*	No. 21719B
JOHN A. CROSS, et al., *Appellants,* vs. S.S. PACIFIC BEAR, her engines, etc., et al., *Appellees.*	No. 21719C
JOHN A. CROSS, et al., *Appellants,* vs. S.S. COAST PROGRESS, her engines, etc., et al., *Appellees.*	No. 21719D

Brief of Appellee Pacific Far East Line, Inc.

INTRODUCTION

By stipulation (Clerk's Transcript, page 274, lines 5 to 11, hereinafter "CT 274 5:11") the sole issue involved is:

> ". . . whether the Trustees of 15 Vacation, Pension and Welfare funds established by collective bargaining between ship operators and the unions representing seamen are entitled to, or are entitled to the benefits of or to enforce, seamen's maritime wage liens upon the five libeled vessels for certain amounts which former operators of the vessels agreed to pay but failed to pay to the Trustees. If and to the extent this is so, recovery should be granted; if and to the extent it is not so, recovery should be denied."

This Brief is divided into the following sections: *First:* A statement of certain facts not included in Appellants' Statement of the Case. *Second:* A discussion of various collateral complications which Appellants' position would lead to if adopted. *Third:* A discussion of the reasons why that position is unsupportable in its own right. Failure to include a section directed to Appellants' Statement of the Case is prompted solely by considerations of a brevity and does not denote agreement with all assertions therein. The salient facts are in any event reduced to stipulation (CT 273 through 291) in a form specifically designed and intended to serve as a self-contained and cohesive narrative thereof.

I.

FACTS OMITTED FROM APPELLANTS' STATEMENT OF THE CASE

1. The trust funds are used for other purposes besides the payment of benefits to seamen and derive from other sources besides Employer Contributions.

Appellants' characterization of the trusts as mere "conduits" through which seamen receive vacation pay, pensions

and welfare benefits (Ap. Br. 13 and elsewhere) is not properly descriptive. For instance, it is not true that every disbursement from the trust corpus goes to a seaman. In addition to the payment of benefits to seamen, trust funds are expended for many other uses, far removed from anything that could possibly be associated with a maritime lien. Thus, (Vessel Exhibit F 4:1 to 6:12; Vessel's Exhibit G 3:27 to 4:6 and 5:1-11; CT 288:24 to 289:10) benefits are also paid to *shoreside* workers, including (depending upon the particular trust involved) Union officials, clerks and staff personnel engaged in administering the trusts, instructors and staff of shoreside recreational facilities, shore-based workmen employed to repair and maintain empty cargo vans, and personnel assigned to indefinite or permanent shoreside duties. Furthermore, the expenses of administering the trusts, including staff salaries, space rental, office equipment, legal expenses, traveling expenses, insurance, accounting and actuarial services, investment expenses, etc. are all paid out of the corpus of the trust (Vessel's Exhibit F 6:13-21). In short, many of those who received benefits work ashore, and substantial portions of the trust funds are disbursed for other than benefits to *any* worker.[1]

Nor should it be thought that the benefits paid seamen derive exclusively or directly from Employer Contributions of the kind here sought to be recovered. The contributions are invested and a substantial part of the trusts' income derives from earnings on their extensive security holdings

---

1. The amount donated *each year* by the SUP Welfare Trust to the support of the Andrew Furuseth School for Seamanship exceeds the total combined delinquencies of Coastwise Line and Dorama sought to be recovered herein by this trust (Reporter's Transcript 107; CT 278:20).

(Reporter's Transcript, hereinafter "RT" 102:8-10).[2] In the case of some of the trusts the employees themselves also conrtibute sums (CT 277:20-25).

Thus, it is proper to describe the trust as a "conduit" between Coastwise/Dorama and the seamen employed on their vessels only if it is proper to speak of the Crystal Springs Reservoir—augmented as it is by local streams and rains and drawn on as it is for many uses—as a "conduit" between Hetch-Hetchy Dam and a particular householder's kitchen sink.

2. Receipt by the seamen of the benefits to which they are entitled is not dependent upon payment of the contributions due from any particular employer; each seaman receives his benefits whether his employer makes the payments due or not.

It is conceded (Ap. Br. 14) that all seamen who worked on the five libeled vessels had been paid all benefits claimed "prior to trial" and that no beneficiary of any trust had been denied a benefit "prior to trial" because of the Coastwise/Dorama delinquency. Here, again, this is by no means the whole story. The fact is that neither the seamen employed on the Coastwise/Dorama vessels concerned nor any other seamen on any other vessel, past or future, will ever for that reason receive less than the full benefits to which he is entitled. One of the facts stipulated (CT 284:11-16) is that:

> "The operation of each benefit plan is reviewed annually and if considered necessary or advisable, the size

---

2. An audited financial statement of the MM&P Pension Fund for the year 1962, admitted as vessel's Exhibit A, was characterized by witness St. Sure as a "typical" statement, (RT 103:3-5), though the "earnings from the invested securities will vary because of different philosophies that have been developed by the various unions and the trustees involved." (RT 102:16-19). For the court's enlightenment the list of securities then current is reproduced as Appendix A hereto.

of Employer Contributions is adjusted in the light of such review and of actuarial estimates as to future demands on the funds so as to enable the Trustees to continue to meet the required benefit payments."

More specifically, it is admitted (depending upon the particular trust involved) that PMA and its members guarantee the benefits,[3] that the employers would "necessarily have to absorb the amount of the delinquent contributions [owing by Coastwise and Dorama] if collection efforts proved unsuccessful,"[4] that the contribution rates are commonly increased *retroactively,* based on actuarial reports and new benefit schedules agreed to,[5] that the employers are committed to "a program of providing a fixed benefit rather than a contribution,"[6] that "the PMA members in effect guarantee payment of contributions for employment with all PMA members on a pooled basis so that if one member is delinquent the other members would have to make up the deficiency,"[7] and that employees are credited with the full number of days of covered employment whether or not their employer has paid the necessary contributions to the trust.[8] Counsel referred during the trial to "the fact that the benefits are guaranteed by the Pacific Maritime Association" (RT 31:2-3) and stated that "the maintenance of the trust funds is guaranteed" and that "PMA is a guarantor" (RT 31:19-21). Mr. St. Sure, Chairman of the Board of PMA, confirmed that "the amount of contributions vary depend-

---

3. Vessel's Exhibit G, Para. 2(a) (b) and (c).
4. Vessel's Exhibit G, Para. 6 and 11.
5. Vessel's Exhibit G, Para. 5, 12, 13, 15.
6. Vessel's Exhibit G, Para. 16 and 19; also 21.
7. Vessel's Exhibit G, Para. 17.
8. Vessel's Exhibit G, Para. 22.

ing upon the actuarial experience of the funds" (RT 102: 10-12). Finally, it is stipulated (CT 290:27-30) that:

> "So far as is now known or can reasonably be anticipated, the quantum of benefits to be received in the future by each seagoing beneficiary of the Trusts will be the same, whether or not any recovery is effected by the Trust in any of the five consolidated actions."

3. In addition to Employer Contributions, four of the trusts make provision for Employee Contributions as well.

In the case of the MEBA, SUP, MFOW and MCS Welfare Trusts, provision is made for an optional direct contribution by the seamen themselves, in addition to Employer Contributions of the type here sought to be recovered (Vessel's Exhibit F 8:1-6). Where such is desired an "Enrollment Card" (samples are appended to Vessel's Exhibit F, pages 8 through 11) must be signed by the individual seaman authorizing his employer to deduct 1% of his "wages"[9] and pay such amount into the trust fund. The importance of the fact that the personal signature of the individual is required for the employ*ee* contribution but not for the employ*er* contribution, is made clear hereinafter, p. 13.

4. The governing documents preclude the attribution of "wage" status to the Employer Contributions.

Each of the fifteen trusts was created by a Trust Agreement executed by PMA and the Union in question. In all but one or two instances, there is also a Declaration of Trust, executed by the trustees. These agreements and declarations are the documents which prescribe and describe the duties and rights of those concerned. They are collected and in evidence as Vessel's Exhibit 2, the location therein

---

9. "Wages" as here used does *not* include any part of the Employer Contribution which the trusts contend is secured by the seaman's "wage" lien. Vessel's Exhibit F 12:8-12.

of the documents pertaining to each particular trust being identified by a marginal name tab. Vessel's Exhibit 2 is formidable in bulk (it is three inches thick and includes 68 separate documents) but, fortunately for those having the responsibility of informing the court of pertinent material therein, the agreements and declarations to a large extent follow the same or similar formats and have parallel or counterpart language so that statements having general application can be made about them.

The notion that payment of the Employer Contributions is secured by a "wage" lien is antithetical to various provisions in these governing documents. Thus:

(a) In the case of eleven of the fifteen trusts the documents explicity state that:

> "[Employer] contributions to be paid into the fund shall not constitute or be deemed wages due to [employee]."

(b) In the case of each of the trusts the amount of Employer Contributions payable is a *function* of the number of days the seaman is paid "wages."[10]

(c) All of the trusts provide that the individual workmen (beneficiaries) have no right to Employer Contributions and no interest in the corpus of the trust. More specifically, in all cases the creating documents provide in words identical or identical in effect that:

> "No [employee] . . . shall have any right, title, interest or claim in or to his employer's or any other contributory employer's payments or contributions to the fund."

and/or that:

> "No [employer] shall have any right to receive any part of the contributions instead of [or in lieu of] benefits."

---

10. As an example, Section 1(c) of the MMP Welfare Plan provides: "An employee shall be regarded as having 'employment' with respect to which a contribution is due on any day for which he is entitled to be paid wages."

So far as an interest in the corpus itself is concerned, in eight of the trusts the creating documents provide that no employee:

> "shall have any vested rights in or to the Fund or any part thereof, and upon the termination of the trust hereby created, the fund shall be put to the uses and purposes specified herein."

and in six it is provided that:

> "Neither PMA, nor any union, nor any employer, nor any employee, nor any beneficiary under the Plan shall have any right, title or interest or any of the monies or property of the [trust]."

A key to the location of the foregoing provisions in Vessel's Exhibit 2 is included as Appendix B to this Brief.

(d) Frequently there is not the direct relationship between the amount of the Employer Contribution and the productivity or job rating of the employee involved characteristic of "wages". Thus, in the case of the MMP Pension and Welfare Plans, eligibility for benefits is *lost* if the employee ceases to be a member of the Union labor pool (Article IV, pp. 13 and 14, "First Amended MMP-PMA Pension Agreement" and § 6 (b) (d) of "First Amended MMP-PMA Welfare Plan Agreement" in Vessel's Exhibit 2). In the case of each of the trusts, the right to any benefits is *dependent on a minimum number of days* of work having been performed during a specified period (CT 288:11-14). In the case of the Vacation trusts of the licensed officers, a change in employers can effect the right to benefits *retroactively,* i.e., the benefits are higher if the employee serves a specified minimum time with the same employer (§ IV(b) of the MEBA, MMP, and ARA Vacation Plans, Vessel's Exhibit 2).

Yet in each instance the obligation to pay Employer Contributions remains constant.

II.

COLLATERAL CONSEQUENCES OF A HOLDING THAT A CLAIM FOR DELINQUENT EMPLOYER CONTRIBUTIONS IS ENFORCEABLE BY A MARITIME LIEN

1. Such a result would contravene the purposes of the Ship Mortgage Act of 1920, and do so by violating the rule forbidding extension of secret liens.

Prior to 1920 ship mortgages were not justiciable in Admirality, and were thus outranked by all maritime liens and unattractive as security. In that year Congress, motivated by the objective of encouraging American investment in shipbuilding,[11] passed the Ship Mortgage Act. Among other factors necessarily considered was the rank which the preferred mortgage should enjoy in the hierarchy of maritime liens. It was determined (46 USC 593 (a)) that the only liens which should outrank a preferred ship mortgage were liens pre-dating the mortgage and liens "for damages arising out of torts, for wages of a stevedore when employed directly by the owner . . ., for *wages of the crew of the vessel,* for general average, and for salvage . . ." (Emphasis added.) Fairly stated, the issue in this case is whether Congress' intention will be subserved by permitting delinquent Employer Contributions to outrank valid preferred ship mortgages when the fact is (supra, p. 4, 5), that no seamen will suffer in the slightest if the delinquency is not recovered.

Holders of preferred ship mortgages are not the only class concerned with the security value of vessels. Repairmen, suppliers, towers and many others rely heavily on the

---

11. "The purpose of the Ship Mortgage Act 1920 . . . was to make ships' mortgages desirable investments . . ." *Atlantic Steamer Supply Co. v. SS TRADEWIND,* 153 F. Supp. 354, 358. See *Gilmore and Black, The Law of Admiralty* § 9-48; *Merchants & Marine Bank v. The T. E. WELLES,* 289 F. 2d 188, 193, 194; *Detroit Trust Co. v. BARLUM,* 293 U.S. 21, 39.

credit of the vessel available to them through the remedy of a proceeding *in rem.* Buyers of vessels also are concerned with the possible existence of undisclosed and unknown liens. Because of this it has repeatedly been recognized that:

> "The maritime lien is a secret one. It may operate to the prejudice of prior mortgages or of purchasers without notice. It is therefore *stricti juris* and will not be extended by construction, analogy or inference." (*Piedmont Coal Co. v. Seaboard Fisheries Co.,* 254 U. S. 1, 12.)

See also *The Yankee Blade,* 19 How. 82, 89; *Osaka Shosen Kaisha v. Lumber Co.,* 260 U.S. 490, 499; *Plamals v. Pinar Del Rio,* 277 U.S. 151, 156; *The Saturnus,* 250 F. 407, 414; *Benedict on Admiralty,* § 15.

This is *precisely* what the trusts are here attempting to do, viz., to "extend" the lien given for a seaman's wage to make it applicable to Employer Contributions by *"analogizing"* the latter with the former, despite the obvious differences between the two (infra pp. 17-19).

The situation before this court presents a good illustration of the wisdom of the principle stated in the above quotation and the mischief it is designed to counteract. Where cash wages are concerned, a mortgagee need have little concern that any threat to his security will develop from this direction beyond the amount that might accrue during one voyage. If the seamen are not paid everything to which they are entitled at voyage-end it is most unlikely the vessel would not be seized and the mortgagee thereby notified of the situation before the wage priority has a chance to compound. In the case of Employer Contributions, on the other hand, the trusts are under no compulsion to insist on timely payment; indeed, the longer the vessel can meet its payroll and keep operating, the more employ-

ment is afforded their beneficiaries. It is stipulated (CT 286: 19-32) that Coastwise Line first failed to timely meet a monthly contribution about a *year and a half* before it ceased operations, by which latter time it had fallen behind so far that the last payment made, in January, 1960, was allocable to the previous February. Dorama made no contributions whatsoever during its period of operation, except to the three MMP trusts (CT 287:1-7). The result was that by the time the operations of these companies terminated the delinquencies which the trusts are now attempting to recover from the preferred mortgagees had grown to substantial proportions.

The foregoing illustrates a point of general application, viz. if the seaman's wage lien were to be extended to include Employer Contributions, investors who rely on the security afforded by the Ship Mortgage Act, as well as materialmen, suppliers, buyers and others, would incur substantial risks of priority debts accumulating over periods of time unbeknownst to them.[12] *At the very least,* any program designed to effect such an extension of the statutory "preferred maritime lien" should be acted upon by Congress. Congress alone should decide whether one of its creatures (the "preferred maritime lien") is to be expanded and another (the "preferred ship mortgage") *pro-tanto* devalued.[13] It is difficult to think of a more typical call for legislative rather than judicial deliberation—or a more manifest example of the

---

12. The fact that a particular mortgagee may know that such trusts exist, does not affect the principle. As a general proposition, lenders will *not* know whether the contributions are being paid to the trusts when due or are being permitted to build up. The necessity of policing the mortgagor's monthly commitments (or the attendant risk of not doing so) would substantially reduce the attraction of a preferred ship mortgage as a security device.

13. See last sentence of majority opinion in *U.S. v. Embassy Restaurant,* 359 U.S. 29, 35 (discussed infra pp. 25, 26): "If this class [i.e. "wages"] is to be so enlarged, it must be done by Congress."

wisdom of the rule that the courts will not extend maritime lien status, secret and potent as it is, by "construction, analogy or implication."

2. If Employee Contributions are "Seaman's Wages," their collection by appellants is illegal under 46 USC 599(g).

For there to exist a lien for "wages of the crew of the vessel" the item secured must perforce be a "wage." Whenever a crewmember's "wage" is paid to anyone other than himself, it is necessary to examine 46 USC 599—the so-called "Allotment" statute—sub-division (d) of which makes it *unlawful* for another to receive a seaman's wages except as therein provided.

Subsection (g) (added in 1950) is the only relevant portion and it provides in pertinent part as follows:

> "The provisions of this section shall not apply to, or render unlawful, deductions made by an employer from the wages of a seaman, pursuant to the written consent of the seaman, if (1) such deductions are paid into a trust fund established for the sole and exclusive benefit of seamen . . . (2) such payments are held in trust for the purpose of providing . . . medical and/or hospital care, pensions . . . life insurance, unemployment benefits, compensation for illness or injuries resulting from occupational activity, sickness, accident and disability compensation, or any one or more of the foregoing benefits . . ."

Two features of this statute have critical importance to the instant suits.

(a) The first is that to be lawful the deduction must be "pursuant to the written consent of the seaman." It is conceded (Vessel's Exhibit F 12:2-7) that in the case of none of the fifteen trusts is any written consent given by a seaman to the payment of Employ*er's* Contributions to the

trust. By contrast, in the case of the four trusts in which provision is made for Employee Contributions, the signature of each seaman authorizing the deduction and payment to the trust *is* required (supra p. 6).

The failure of the trusts to obtain the seaman's written consent to paying Employer Contributions to the trusts is consistent only with a recognition by all concerned that Employer Contributions—as distinguished from Employee Contributions—are not "wages."[14] If they *are* "wages," then it is illegal for the trusts to recover them in view of the absence of "written consent of the seaman" and the instant suits must fail on this ground. (No authority is known for the proposition that a debt which it is illegal to collect in an *in personam* proceeding can be collected in an *in rem* proceeding.)

(b) The second feature of importance in connection with sub-division (g) is the omission of any reference to *vacation* trusts. Only pension and welfare plans are listed as sanctioned objects of allotment. If the Employer Contributions here sought to be recovered are treated as "wages," then the claims for amounts due the vacations trusts are unenforceable as unpermitted allotments under 46 USC § 599.

---

14. This was the holding in *Denton* (cited and discussed infra), where the Court noted that, "No effort was made to provide for deductions from the wages of a seaman pursuant to his written consent as is permitted by 46 USC § 599 (g)" (302 F. 2d 404, 415). It also accords with the position set forth in the letter from Executive Secretary of the C.I.O. Maritime Committee to the House Merchant Marine and Fisheries Committee (Vessel's Exhibit C, page 19) opposing the addition of sub-section (g) to Section 599 because of the objection to any further extension of the categories of permitted deductions from a seaman's "wages." In advancing this contention the establishment of pension and welfare funds "based on employers' contributions only" was described as a "sound principle which should be retained." To the writer of this letter, the addition of sub-section (g) was unnecessary to validate employer contributions *because they are not "wages."* For the Court's ready convenience, this letter is reproduced as Appendix C to this Brief.

3. Recovery of Employer Contributions related to masters would violate the rule that a master's wages are not enforceable by a wage lien.

Under American law, a master has no lien for his wages. *Benedict on Admiralty,* § 80; *Gilmore and Black, The Law of Admiralty,* p. 512; *Robinson on Admiralty,* p. 369. A substantial portion of the delinquencies here sought are allocable to the employment of masters, to whom the libelled vessels would not be liable *in rem* even in a direct action brought by the individual involved for conventional wages.

4. A serious threshold question of jurisdiction is involved.

> "A contract to work on the ship is of course maritime . . . but not a contract to procure someone so to work." *Goumas v. Karras,* 51 F. Supp. 145, affirmed, 140 F.2d 157.

The *Karras* case was a libel *in rem* by a ship chandler who had been employed to supply seamen for service on a vessel which the operator was alleged to have known was verminous. After sighting her condition, the men refused to work aboard her. The recovery sought was the cost of transporting the men to the ship and for their lodging, etc. until libelant could find them other employment. The court dismissed the libel for lack of jurisdiction, stating:

> "Here the contract was clearly a land contract to furnish seamen. *The maritime contract . . . was that made by the seamen for work upon the ship.*" (Emphasis added.)

In *The Josephine & Mary,* 120 F.2d 459, an injured seaman alleged breach of an agreement by the vessel owner to pay all hospital and medical expenses plus a share of the "catch" of the season's fishing. The Commissioner found, and the District Court and the Court of Appeals agreed, that the contract

". . . is not a maritime contract or a contract for the performance of which there was a lien on the vessel."

A recent decision on the point is *Marchessini v. Pacific Marine,* 227 F. Supp. 17, 1964 A.M.C. 1538, reviewing the decisions and holding an agreement to husband vessels, solicit cargo and collect freight to be a non-maritime contract because it did not include the navigation or management of any vessel.

The contracts here sued upon are the Trust Agreements admitted as Vessel's Exhibit 2. These documents are signed by the Pacific Maritime Association on behalf of its members (or, in the case of Dorama, by Dorama, itself) on the one hand, and by the particular Union, on the other. They are not signed by any crew member. They do not obligate any particular seaman to work aboard any particular vessel, or, indeed, to do anything. Nor do they relate to the navigation or employment of any vessel. There is at least serious doubt as to whether any action brought by the trusts to recover Employer Contributions is justiciable in Admiralty at all.[15]

Even if it is justiciable in Admiralty, not every such contract gives rise to rights *in rem.* It is still necessary to recognize, as was done in *The Golden Sail,* 197 F. Supp 777 (discussed infra), the "essential difference between union bargaining agreements of workers ashore" on the one hand, and the "signing of ship's articles between the seaman and the master of the vessel for the voyage" on the other. The former, of course, gives the seaman a right *in rem* against the vessel, but

---

15. This issue was not reached in any of the decisions referred to infra, p. 16 involving Employer Contributions, since in each of these cases the action was commenced as an Admiralty suit to foreclose a preferred ship mortgage in which the trusts' intervening claims were simply denied.

"the trustees' claim under the union bargaining agreement [to recover Employer contributions] is an action *in personam* against the signatory owners thereof" (197 F. Supp. 777, 779).

III.

APPELLANTS' POSITION IS UNSUPPORTABLE IN ITS OWN RIGHT

1. The existing law on the subject is to the contrary.

The precise issue here involved has been considered in the following cases:

The Ozark, (5 Cir. 1962) 304 F. 2d 717, 1962 A.M.C. 1675; cer. den. 371 U.S. 923, 9 L. Ed. 2d 231, 83 S. Ct. 291, 1963 A.M.C. 281;

The Denton, (5 Cir. 1962) 302 F.2d 404, 1962 A.M.C. 1730 (affirming 1960 A.M.C. 2264);

The Golden Sail, (D. Or. 1961) 197 F. Supp. 777, 1962 A.M.C. 2676;

The Kingston, (S.D. Texas) 1961 A.M.C. 1321.

Appellant does not even pretend that these decisions are distinguishable. Although it is apparent from the opinion herein (CT 532-543) that the trial court's decision was reached independently of them, they constitute the state of the law on the subject and they uniformly reject Appellants' position.[16]

It is suggested (Ap. Br. 39-40) that *Denton* is wrong because premised on the proposition that the seaman's wage

---

16. In an effort to dilute the numerical weight of this body of precedent Appellants discuss only *Denton,* relegating *Ozark, Golden Sail* and *Kingston* to the indignity of a mere footnote citation (Ap. Br. 39). Yet in *Golden Sail* the Court was already "about to conclude the issue adverse to the trustees" (197 F.Supp. at 778) before the Commissioner's report in *Denton* was called to its attention, and the report in *Kingston* does not even mention *Denton.* Only *Ozark* can fairly be characterized as an echo.

lien extends only to the wages specified in shipping articles. However, while it is true that formal shipping articles are not mandatory in the coastwise trade and are, therefore, frequently not used, and that a lien nevertheless exists to collect wages earned on such voyages, it is *not* true that the result in *Denton* hinged on the existence of articles. Because articles happened to be used on the voyages before it the Court's remarks were understandably oriented in that direction. What the Court obviously had in mind, however, is the *kind* of payments dealt with in shipping articles, viz., payments which the workers receive directly to use as they wish and are entitled to sue for if necessary. Witness St. Sure confirmed (RT 114:15-22) that so far as wages and benefits are concerned, there is *no difference* between a foreign and a coastwise voyage. Thus the basic differentiation between Employer Contributions due to the trusts and cash payments due to the men, which is the basis of the decision in *Denton,* applies whether formal shipping articles are in effect or not.

2. The basic error in appellants' theory of the case.

The fundamental error in appellants' whole position is the attempt to equate Employer Contributions with "wages of the crew of the vessel", coupled with a failure to recognize that the rationale underlying availability of a lien to secure the latter has no application to the former.

Although they redound to the ultimate benefit of a class of workers which includes crew members, Employer Contributions are a far cry from "wages of the crew of the vessel". They are not owed to or collectible by any sea-going wage earner (supra p. 7), nor is there any identifiable connection between the amount due from a particular employer and the compensation earned by a particular seagoing wage-earner or group thereof. The documents creating the obli-

gation state that they are not "wages" (supra p. 7). They are commingled with other monies in a fund in which no wage-earner, seagoing or otherwise, has a legal interest (supra p. 7) and a substantial part of which is used for payments to other than sea-going wage-earners (supra p. 3). A crew member on account of whose employment the contribution becomes due may or may not receive benefits from the trust (supra p. 8). As succinctly stated by the trial court (CT 539:1-3): "These contributions are a means of financing the trust funds but they *do not constitute the compensation to which any seaman is or may become entitled.*" (Emphasis added.)

Just as Employer Contributions are not "wages" due to sea-going workers, so is it equally true that the trusts cannot be classed as the "crew of the vessel" for Appellants' purposes. No one questions the sanctity of a seaman's wage lien, or denies that the seaman serving aboard the libelled vessels during their Coastwise/Dorama operation performed maritime services of the kind which give rise thereto; had any such seaman not received everything due him and sought relief, quite different questions would be presented in this case, as the Trial Court noted (CT 539:10-19). Such liens, however, were created and exist for the protection of a particular class, viz. seafaring workers—the familiar "wards of the Admiralty Court." In contradistinction, Appellants are highly sophisticated institutions, professionally managed and supervised by employer and union officials. Whereas a wage lien is appropriate to protect a worker in the event of his employer's insolvency, appellants are quite capable of assuring unimpaired operation of the trusts notwithstanding such a misfortune, as demonstrated by the very failures of Coastwise and Dorama which gave rise to the instant action. Employer Contributions are at present guaranteed by the Pacific Maritime Association

(supra p. 5). Should this security ever be felt inadequate, appellants can at any time require performance bonds, collateral deposits and/or advance payments as a condition to permitting the ships to be manned. They hardly need a maritime lien outranking all others to collect amounts which they have been able to arrange to have guaranteed by the entire West Coast shipping industry.

In short, Employer Contributions fail to qualify for a "Seaman's Wage" lien on both counts descriptive of this characterization, and none of the reasons for which such a lien exists have application to them.

3. Incompatability of appellants' position with the fact that all seamen have been paid in full.

Further error occurs in appellants' futile efforts to explain how a lien can survive after the debt it is supposed to secure has been paid—i.e., to answer the question put by the Trial Court during opening arguments (RT 26:14): "Where is the existing unpaid compensation which would give rise to the lien?" Cases on assignability of a wage lien are cited (Ap. Br. 27) but no assignments were executed. This leaves only the possibility of subrogation.[17]

There are several reasons why subrogation is inapplicable. In the first place: ". . . one cannot acquire by subrogation what another whose rights he claims did not have." *United States v. Munsey Trust Co.*, 332 U.S. 234, 242. (See *Am. Jur. "Subrogation"* § 110, footnote 13, citing cases.) As noted above, (p. 7), the very documents which create the obligation to make Employer Contributions declare that the seamen have no interest therein. Thus, there is no seaman-

17. "It is elementary that before there can be a lien for wages of the crew there must be a member of the crew whose wages have not been paid, except in cases of true subrogation" (District Court opinion in *Denton*, 1960 A.M.C. 2264, 2278).

vested right to sue for or receive these payments to which appellants *could* become subrogated.

Furthermore, there is no group of seamen which has received the precise amount here sought, as would have to be the case were subrogation involved. Indeed, there is no evidence as to the amount received by *any* seaman or group thereof, and this alone is fatal to subrogation. "[The] right to a maritime lien as to seamen's wages advanced being claimed by subrogation, it is incumbent on libelant . . . to show the individual seamen paid and the amounts paid each." *The Englewood,* 57 Fed. 2d 319, 320. In any event, in paying out benefits to seamen, appellants are not advancing monies owed to them by some other party, as is the situation where subrogation arises, but are simply discharging claims for which they, and they alone, are liable. Coastwise Line and Dorama were not liable to or sueable by the seamen aboard the five libelled vessels for such benefits as the latter may ultimately have received from the trusts. Their only obligees were appellants, and it was the *latter* to whom the seamen could look for the benefits. Subrogation

> "is allowed only in favor of one who pays the debt of another, which debt was a valid enforceable obligation against that person, and subrogation is not allowed in favor of him who pays a debt in performance of his own obligation . . ." *C.J.S. "Subrogation"* §8.

Another difficulty in trying to apply the principle of subrogation here is that the money which is used to pay benefits does not in any fair sense come from the trusts but from those who finance the trusts. Thus, if subrogation *were* applicable, the rights acquired should pass and belong, at least beneficially, to the contributing employers. Accepting this premise, it is well established that maritime liens cannot be acquired by subrogation where (as in the case of

Employer Contributions) the monies advanced are used indiscriminately for various purposes, some lienable and some not. *I.R.O. v Maryland Drydock Co.*, 179 F.2d 284, 289-290; and see *Piedmont Coal Co. v. Seaboard Fisheries Co.*, 254 U.S. 1, 13.

In the cases cited by appellant permitting succession to the seamen's lien by another (Ap. Br. 26-28), the money was advanced and used solely for the payment of specific, identifiable, then due wage claims, and the intention of standing in the shoes of the wage claimants so far as security of the vessel was concerned was readily discernable. In fact, in the two *Brock* cases cited by appellant the subrogee advanced the money only under a letter of credit running to an agent of the crew to assure that it would be used only for the payment of crew wages. No such earmarking or intention characterizes the payment by PMA members of Employer Contributions, accruing with inexorable regularity and paid with full knowledge that they will lose identity in the corpus of a trust from which many disbursements are made to other than seamen.

4. The "wage package" fallacy.

A further error is the suggestion (Ap.Br. 9-11) that because changes in welfare, pension, and vacation benefits are negotiated along with changes in base wages on a so-called "package" basis the lien which the law provides for the latter becomes applicable as well as to the former. Although Appellants refer to it as a "*wage* package" the PMA witness (Mr. St. Sure) described it as a "*cost* package" (RT 72:24; RT 74:7; RT 90:21). He testified (RT 93:6-11) that the unions:

> ". . . want the same costs to be put into their pocket by the employer to match what the other fellow got

> percentagewise, even though it may not be in direct wages; it may be in welfare, pensions, medical centers, training schools or what have you."

It is evident that the "package" appellation is nothing but a reflection of the fact that the basis used in collective bargaining negotiations is over-all *cost* to the employers. How much of that cost goes into the men's pockets (as wages), how much goes to the trusts (as Employer Contributions), and how much to other projects, such as "medical centers, training schools or what have you", is of little importance to the companies; their only concern is the amount of the total labor *cost.*

The fact that the various cost components are lumped together for collective bargaining purposes, or that an over-all sum once negotiated is thereafter allocated (by the Unions, Ap.Br. 10) amongst those components, does not mean that the components in question change character or take on the attributes of others. The term "package" in the sense utilized is no more than a metaphor, descriptive enough to be useful if so understood but devoid of any metaphysical properties which can affect the character of the components which it collectively describes. The components themselves retain whatever attributes they had. A wage is a wage, whether it is in or out of the "cost package", and the same applies to Employer Contributions. One is not the other (pp. 17-19 supra) even though the employer pays both. It is the kind of payment involved, not the manner in which it is negotiated, that determines lien status.

One further brief comment: The "package" argument is not a new one. In *Embassy Restaurant* (discussed infra p. 25) the court noted:

> "It is contended, however, that since 'unions bargain for these contributions as though they were wages' and industry likewise considers them 'as an integral part

of the wage package,' they must in law be considered 'wages'," (359 U.S. 29, 33.)

The contention was rejected on the ground that this was merely descriptive of a business practice.

5. The actions cannot be regarded as suits for the benefit of seamen.

To meet the difficulty that the parties here seeking to enforce a wage lien are not wage-earners, Appellants suggest that the suits are representative actions, brought "not . . . for themselves but for the beneficiaries" (Ap.Br. 38).

One difficulty with this is that, as noted above p. 3, many of the beneficiaries are shoreside workers to whom the asserted lien is not available even in a direct action. A more basic difficulty is the fact that by stipulation no beneficiary will be affected in the slightest by the outcome of these suits because the quantam of benefits received and to be received is the same whether a recovery is effected or not (CT 290:15-30). As the trial court noted (CT 539:24-28) a suit to recover a delinquent Employer Contribution, rather than being for the benefit of the beneficiaries, is "more for the protection of the other steamship companies against increase of their rate of compensation by reason of default of one or some of them."[18]

6. The wage lien cases relied on by appellants are inapposite.

The fact that the Employer Contributions are not payable to or collectible by a wage-earner decisively distin-

---

18. Because the delinquencies here sought are so miniscule as compared to the enormous sums passing into and out of the trusts every year—$13,480,156.46 in 1960 (Vessel's Exhibit F 7:6) and many times that as of today—and because there is no reasonable possibility that any of the trusts will ever become insolvent, it is more probable that the only party who might conceivably benefit by a recovery in this case would be the residual beneficiary named to receive the balance of the corpus should the trust ever terminate.

guishes the instant suits from all of the decisions cited in Ap. Br. 21-22 in which maritime wage liens have been enforced for the recovery of various "forms of compensation other than base wages," including *Gayner v. The New Orleans* digested and strongly relied on. In all of these decisions the plaintiffs were seamen, and the sums recovered, whether in the form of extra hazard bonus, maintenance, fishing lays, war bonuses, wages due on breaking up of the voyage, wages due during idle status, discharge benefits as in *Gayner,* the statutory double pay penalty for tardy payment of wages or the statutory extra pay penalty for improper discharge, were sums *owing and payable directly to the seaman,* to do with as he wishes. In the case of the instant suits, by contrast, if a recovery were to be effected "no part of the amount thereof will be distributed . . . to any individual beneficiary . . . but the amount of such recovery will be added to the corpus." (CT 290:8-13.)

7. Determinations by the interested Government agency as to which labor cost items qualify for the allowance of a subsidy have nothing to do with the issues in this case, and, if they did they do not support appellants' contention.

Appellants' allusion to the Federal Maritime Administration "Manual of General Procedures for Determining Operating-Differential Subsidy Rates" (Ap. Br. 31) is preposterous. The Secretary of the Subsidy Board testified that FMA pays no attention in its deliberations to what may or may not give rise to a maritime lien (Trust Exhibit 4, p. 16). He testified that under the applicable statute (46 U.S.C. 603 (b)) a subsidy is paid with respect to ". . ., wages and subsistence of officers and crews, and any other item of expense in which the Board shall find . . . that the Applicant is at a substantial disadvantage . . . with foreign flag competitors," and that the listing of the cost

of Employer Contributions under "wages of officers and crew" in the Manual was done purely as an administrative expediency—that such costs actually "fall within the category of 'other items of expense' " (p. 6). In any event, he further testified (p. 13-14) that certain payments which do *not* give rise to a maritime lien (viz., FICA and Federal Unemployment Taxes and State Unemployment Compensation Taxes)[19] are *in*cluded in the definition of wages for subsidiary purposes, while other items that *do* give rise to a maritime lien (viz. extra pay earned by the steward's department for serving meals to noncrew members) are *ex*cluded from that definition. Graphically illustrating the irrelevance of action by the Subsidy Board to the issues of this case is the ruling disallowing for subsidy purposes the wages of two dining room captains and an assistant cook employed aboard the passenger liner *SS United States* (Vessel's Exhibit 14).

8. Appellants' preference for United States vs. Carter rather than Embassy Restaurant is misplaced.

Appellants seek support from *United States v. Carter,* 353 U.S. 210, imposing liability on a Miller Act surety for contributions to "fringe benefits." However, the later Supreme Court decision in *United States v. Embassy Restaurant,* 359 U.S. 29, holding that Employer Contributions to a welfare fund of the exact type here involved are not "wages" for priority purposes under the Bankruptcy Act is far more analagous. And in giving reasons for denying "wage" status to Employer Contributions, the Court in *Embassy Restaurant* made several observations having direct application to the instant suits. Thus, the Court noted (32-33):

---

19. Government tax liens are not maritime liens and are outranked by the latter. *United States v. Flood,* 247 F. 2d 209; *United States v. Jane B. Corp.,* 167 F. Supp. 352, 356.

> "It [the Employer Contribution] is due the trustees not the workmen, and the latter has no legal interest in it whatsoever. A workman cannot even compel payment by a defaulting employer. Moreover, it does not appear that the parties to the collective agreement considered these welfare payments as wages. The contract . . . refers to them as 'contributions' . . . [The employer's] obligation is to contribute sums to the trustees, not to its workmen; it is enforceable only by the trustees, who enjoy not only the full title but the exclusive management of the funds."

The Court points out a further reason for denying bankruptcy priority, which applies with equal force to the asserted lien status. Thus, the Court stated (pp. 33-34):

> "These payments, owed as they are to the trustees rather than to the workman, *offer no support to the workman in periods of financial distress* . . . if the claims of the trustees are to be treated on a par with wages, in a case where the employer's assets are insufficient to pay all in the [wage] priority the workman will have to *share with the welfare plan, this reducing his own recovery.*" (Emphasis added.)

In the same manner, in the event of a casualty where the company is insolvent and the wreck value of the vessel is insufficient to effect payment of accrued take-home pay, amounts due the trusts for Employer Contributions, would, if given lien status, share in the wreck proceeds and reduce the recovery of the very sums which it has been the historic policy of the law to jealously protect.

It is to be noted further, that the purpose ascribed by the Court to the priority given wages by the Bankruptcy Act—viz. the providing of a "'protective cushion' against economic displacement caused by his employer's bankruptcy"—is equally the purpose served by a lien. It is difficult to

see why considerations denying a priority ranking should not have like effect on a lien.

CONCLUSION

Whenever a business concern fails, some of its debts will be unpaid. Laborers enjoy a law-given preference. Security holders enjoy the preference they have bargained for. Those who have extended credit must take what is left.

This is all that has happened here. Appellant trusts are unsecured creditors. They have advanced no reason why they should be entitled to shoulder aside statutory preferred ship mortgages, outrank other high priority liens such as for general average, salvage, etc., and compete with wage-earners for the mythical "last plank." There are many reasons why they should not.

Wage lien status for Employer Contributions is incompatible with the provisions of the very contracts which give them existence (Supra pp. 7, 8).

Wage lien status is incompatible with the decision of the United States Supreme Court in the *Embassy Restaurant* case (Supra pp. 25, 26).

Wage lien status has been rejected by every court which has considered the question (Supra p. 16); *stare decisis* alone compels dismissal of appellants' claims.

Should wage lien status exist, it would be illegal for the trusts to receive the monies (Supra pp. 12, 13)

Wage lien status for amounts payable on account of the employment of shipmasters would give the trusts rights denied to the worker himself (Supra p. 14).

Wage lien status would seriously impair the value of a Congressionally-created and Congressionally-favored security device—the preferred ship mortgage—and do so by thwarting a firmly established and discerning principle of law, viz. that which forbids the extension of secret liens by analogy (Supra pp. 9-11).

Wage lien status will not benefit or affect any crew member since all obligations to crew members have been and will be met regardless of the outcome of these suits.

The appeals should be dismissed.

Respectfully submitted,

JOHN HAYS
GEORGE L. WADDELL
DORR, COOPER & HAYS
Attorneys for Appellee
Pacific Far East Line, Inc.

CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

JOHN HAYS
Attorney

(Appendices follow)

Appendix A

(EXCERPTS FROM VESSEL'S EXHIBIT A)

"MMP-PMA Pension Fund

Detail of Investments in Securities
January 31, 1963

Face Value	Corporate Bonds	Cost	Market Value
25,000	American Telephone and Telegraph Company, Debentures, 4⅜% due 4-1-85	$ 24,812.50	$ 25,750.00
25,000	American Telephone and Telegraph Company, Debentures, 4⅜%, due 10-1-96	25,341.61	25,546.88
25,000	American Telephone and Telegraph Company, Debentures, 4¾%, due 6-1-98	25,314.61	26,718.75
25,000	Armco Steel Corporation, 4.35%, due 4-1-84	24,812.50	25,625.00
50,000	C.I.T. Financial Corporation, 4⅝%, due 1-1-79	48,700,00	51,750.00
25,000	Cleveland Electric Illuminating Company, 4⅜%, due 4-1-94	24,875.00	25,625.00
25,000	Consolidated Edison of New York, 1st Ref., 4⅝%, due 11-1-91	25,531.25	26,156.25
35,000	Federal Land Bank Consolidated Farm Loan, 4½%, due 2-20-74	35,227.73	36,316.00
25,000	General Motors Acceptance Corporation, Debentures, 4%, due 3-1-79	23,718.75	24,656.25
25,000	General Motors Acceptance Corporation, Debentures, 4⅝%, due 3-1-83	25,026.50	25,906.25
15,000	General Motors Acceptance Corporation, 5%, due 3-15-81	14,930.37	15,937.50
25,000	Illinois Bell Telephone Company, 1st, 4⅜%, due 3-1-94	24,882.72	24,687.50
50,000	Illinois Power Company, 1st Mortgage, 4¼%, due 1993	50,436.00	50,437.50
25,000	Lone Star Gas Company, S.F. Debentures, 4½%, due 4-1-87	25,477.11	25,593.75
25,000	National Steel Corporation, 1st Mortgage, 4⅝%, due 6-1-89	24,757.60	25,875.00
25,000	New England Telephone and Telegraph Company, Debentures, 4⅝%, due 4-1-99	24,875.00	25,593.75
35,000	New York Telephone Company, Refundable Mortgage, 4½%, due 5-15-91	33,643.75	36,225.00

Appendix

(EXCERPTS FROM VESSEL'S EXHIBIT A [CONTINUED])

MMP-PMA Pension Fund

Detail of Investments in Securities, Continued
January 31, 1963

Face Value	Corporate Bonds	Cost	Market Value
46,000	Northern Illinois Gas Company, 5%, due 6-1-84	46,339.79	48,760.00
25,000	Pacific Gas and Electric Company, 1st and Refundable Mortgage, dated 12-1-62, 4¼%, due 6-1-95	25,007.10	25,062.50
50,000	Pacific Gas and Electric Company, 1st Mortgage, 5%, due 6-1-91	49,351.35	53,031.25
35,000	Pacific Telephone and Telegraph Company, 4⅝%, due 11-1-90	35,806.25	36,225.00
25,000	Pacific Telephone and Telegraph Company, 5⅛%, due 2-1-93	25,307.10	25,937.50
50,000	Pennsylvania Power and Light Company, Mortgage, 4⅝%, due 12-1-91	50,623.48	51,937.50
50,000	Philadelphia Electric Company, 1st, 5%, due 10-1-89	50,187.50	53,031.25
25,000	Public Service Company of Colorado, 1st Mortgage, 4⅝%, due 5-1-89	25,305.00	26,000.00
25,000	Public Service Electric and Gas Company, 1st Redeemable, 4⅝%, due 8-1-88	25,750.00	26,171.88
25,000	Public Service Electric and Gas Company, 1st Redeemable, 5⅛%, due 6-1-89	25,490.35	26,437.50
25,000	Southern California Edison Company, 1st Refundable, 4¼%, due 11-1-87	25,102.11	25,187.50
30,000	Southern California Edison Company, 1st Refundable, 5%, due 2-1-85	30,342.90	31,575.00
25,000	Southern Electric Generating Company, 1st, 5¼%, due 6-1-92	25,402.35	26,375.00
50,000	Southwestern Bell Telephone Company, Debentures, 4⅝%, due 8-1-95	50,653.50	51,437.50
25,000	Standard Oil Company of Indiana, Debentures, 4½%, due 10-1-83	24,875.00	25,812.50
25,000	United Gas Corporation, 4⅝%, due 6-1-82	25,318.78	26,093.75
	Total corporate bonds	1,023,225.56	1,057,476.01

(EXCERPTS FROM VESSEL'S EXHIBIT A [CONTINUED])

MMP-PMA Pension Fund

Detail of Investments in Securities, Continued
January 31, 1963

Shares	Common Stock	Cost	Market Value
200	American Telephone and Telegraph Company	23,551.96	24,200.00
1,200	California Packing Corporation	32,081.01	30,600.00
300	Chase Manhattan Bank	21,713.50	25,312.50
400	Commonwealth Edison Company	16,809.76	19,600.00
400	Continental Can Company	20,901.98	18,300.00
250	Continental Casualty Company	14,505.00	21,031.25
700	Crocker-Anglo National Bank	21,400.00	38,062.50
430	Crown Zellerbach Corporation	21,124.05	21,446.25
200	Dow Chemical Company	14,993.90	11,825.00
125	E. I. du Pont de Nemours and Company	23,213.17	30,718.75
800	Federated Department Stores Incorporated	22,104.75	36,900.00
300	Florida Power and Light Company	17,596.96	21,900.00
600	Food Fair Stores Incorporated	22,651.64	14,625.00
300	General Electric Corporation	22,391.45	23,475.00
200	General Foods Corporation	15,093.50	16,875.00
463	General Motors Corporation	22,426.44	29,111.13
300	Hartford Fire Insurance Company	19,851.00	22,950.00
600	Hercules Powder Company	17,535.38	23,925.00
75	International Business Machine Corporation	17,984.26	31,781.25
700	Lockheed Aircraft Corporation	33,061.32	36,050.00
300	Merck and Company Incorporated	23,266.03	25,800.00
400	National Dairy Products Corporation	20,052.08	26,400.00
200	National Lead Company	22,101.10	14,450.00
1,000	Philadelphia Electric Company	26,135.24	32,750.00
800	Public Service Company of Indiana	26,885.04	28,500.00
500	Public Service Electric and Gas Company	20,634.85	35,812.50
700	Safeway Stores Incorporated	27,357.24	32,025.00
1,248	Southern California Edison Company	24,193.37	40,404.00
525	Standard Oil Company of California	25,128.47	34,125.00
600	Standard Oil Company of New Jersey	29,961.57	36,000.00
513	Stauffer Chemical Company	23,796.07	18,596.25
	Total common stocks	690,502.09	823,551.38
	Total investments in securities, page 2	$1,713,727.65	$1,881,027.39

Appendix B

KEY TO LOCATION OF VARIOUS PROVISIONS IN THE GOVERNING DOCUMENTS

(VESSEL'S EXHIBIT 2)

The following is a key to the location of sentences in the trust documents stating that contributions shall not constitute wages:

(The documents in question are to be found in Vessel's Exhibit 2, each set being identified by a marginal tab carrying the name of the Trust.)

Trust	Location
MMP Vacation	Declaration of Trust p. 4, § 4(b)
MMP Welfare	Declaration of Trust p. 4, § 4(b)
MEBA Vacation	Declaration of Trust p. 4 & 5, § 4(b)
MEBA Welfare	Declaration of Trust p. 4, § 4(b)
ARA Vacation	Declaration of Trust p. 4 & 5, § 4(b)
ARA Pension	Agreement p. 22, Art VIII
ARA Welfare	Declaration of Trust p. 4, § 4(b)
SIU Pension	Declaration of Trust p. 4, § 4(b)
MSO Welfare	Declaration of Trust p. 5, § 4(b)
SUP Welfare	Supplemental Agreement p. 11 & 12, XI
MFOW Welfare	Amended Declaration of Trust p. 8, § 4(b)

The following is a key to the location of provisions denying to the beneficiaries any right to collect or interest in the Employer Contributions:

Trust	Location
MMP Vacation	Agreement, XI, (p. 18) Declaration, § 4(a), (p. 4)
MMP Pension	Declaration II § 3, (p. 2)
MMP Welfare	Agreement, § 6(3)(g) (p. 12-13)
MEBA Vacation	Agreement, XI, (p. 12) Declaration, § 4(c), (p. 5)
MEBA Pension	Declaration II § 3, (p. 2)
MEBA Welfare	Declaration, § 4, (p. 4)

Trust	Location
ARA Vacation	Agreement, XI, (p. 16)
	Declaration, § 4(c), (p. 5)
ARA Pension	Declaration, II § 3, (p. 2)
ARA Welfare	Agreement, § 2(c) (p. 5)
SIU Pension	Declaration, § 4c (p. 4)
MSO Welfare	Agreement, § 2c, (p. 6)
	Declaration, §4c, (p. 5-6)
SUP Welfare	Agreement, XII (p. 12)
MFOW Welfare	Agreement, § 6(j), (p. 10)
MCS Welfare	Agreement, XI, (p. 11)
SIU Supplemental Benefits	Agreement, XI, (p. 18)

The following is a key to the provisions denying to the beneficiaries any right to or interest in the corpus of the trust:

Trust	Location
MMP Vacation	Agreement, Art. XI, (p. 18)
MMP Pension	Agreement, Art. XI, (p. 33)
MMP Welfare	Agreement, § 6(3)(g) (p. 12-13)
MEBA Vacation	Agreement, Art. XI, (p. 12)
MEBA Pension	Agreement, Art. XI (p. 28)
MEBA Welfare	Declaration § 4(a) (p. 3)
ARA Vacation	Agreement, Art. XI (p. 16)
ARA Welfare	Declaration § 4(a) (p. 4)
SIU Pension	Agreement Art. XI, (p. 24)
MSO Welfare	Declaration § 4(a) (p. 5)
SUP Welfare	Agreement Art. XII, (p. 12-13)
MFOW Welfare	Agreement § 6(j) (p. 11)
MCS Welfare	Agreement Art. XI (p. 11)
SUP Supplemental Benefits	Agreement Art. XI (p. 18)

Appendix C

LETTER FROM EXECUTIVE SECRETARY, C.I.O. MARITIME COMMITTEE TO HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE (PAGE 19 OF VESSEL'S EXHIBIT C)

"CIO Maritime Committee
Washington 3, D. C., September 14, 1950

The Honorable Edward J. Hart
Chairman, House Merchant Marine
and Fisheries Committee,
House Office Building, Washington, D. C.

Dear Congressman Hart: We are opposed to H.R. 8349, a bill to authorize deductions from the wages of seamen for payment into employee welfare funds.

Before the passage of protective laws seamen's wages were subjected to many unjust deductions. Deductions from seamen's wages should be made only for taxation purposes and other purposes that do not lead to a general depletion of take-home pay. Deductions for welfare funds will open the door for other deductions. This we most definitely oppose.

The philosophy of American labor unions is that pension and welfare plans fall within the scope of responsibility of the industry to which the workers devote their lives. This philosophy is being realized in American industry today. For example more and more American companies are accepting pension and welfare plans based on employer contributions only.

The CIO seamen's unions and maritime management have agreed to a pension and welfare fund based on employers' contributions only. This is a sound principle and should be retained.

Because your committee is so familiar with the necessity of retaining protective laws applying to deductions from seamen's wages, we cut our statement short. We shall be glad to enlarge this statement if so requested.

Sincerely yours,

Hoyt S. Haddock
Executive Secretary."